Historic Preservation

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Historic Preservation

- Defined
- National Register
- Historic Properties
  - Buildings/Structures
  - Sites
  - Objects
  - Districts

NHPA

- Regulation Litigation
- Purpose (1966)
- Additions to the NR
- Agency Duties
  - Consider effects
  - Minimize harm
  - Consultation Prior to Action

NHPA - Section 106

- **Consultation Requirement**
- **Parties involved**
- **Trigger**
  - **undertaking by federal agency**
  - **that could affect**
  - **an historic site**

NHPA - Key Definitions

- Area of Potential Effects
- Historic Property
- Undertaking
- Criteria of Effect
- Adverse Effects

NEPA/NHPA Interface

- **Handout: MAJ Ayres' *Army Lawyer* Note**
- **Timing issues**
- **Segmenting projects**
- **Documentation issues**

Handout, Ayres' TAL Note

Section 106 Overview

- Initiate the process
- Identify Historic Properties
- Assess Adverse Effects
- Resolve Adverse Effects

Initiate the Process

- Undertaking?
  - Two pronged test
  - If failed, 106 process stops
- ID appropriate SHPO/THPO
- Plan to involve public
- ID other consulting parties

ID Historic Properties

- Determine scope of efforts
- Identify historic properties
  - No HP, 106 ends
  - Yes HP, Assess Effects
  - Dispute resolved by Keeper
- Evaluate historic significance

Assess Adverse Effects

- **Apply criteria of adverse effect**
- **Effect, process continues**
- **No effect, notify other parties**
  - **SHPO agrees, no objection w/in 30 days, process ends**
  - **SHPO disagrees, resolve conflict**
    - Consultation or ACHP review
    - 15 days for Council to respond

Resolve Adverse Effects

- Continue consultation
- Notify ACHP & invite if:
  - Agency Official wishes
  - NHL affected
  - Programmatic Agreement in the offing
- If Agreement => Negotiate MOA
  - Standard treatments
  - Signatories: Cdr, SHPO, (ACHP)

Failure to Agree

- If Agency, request ACHP comment
- If SHPO, ACHP and Agency may still execute MOA
- If ACHP, comment to Secretary
- Secretary must document final decision on the undertaking
  - Rationale
  - Notify consulting parties, public

Conclusion

- Trigger = undertaking
- Don’t forget NEPA
- Involve the public
- Don’t segment projects\
- Questions?